Court No. 2

The high court of Uttaranchal at Nainital

Appeal From Order No. 1037 of 2001

(Old No. 152/1997)

The State of U.P. through the Superintending Engineer,
Yamuna Civil Construction Division, Dehradun.
… **Plaintiff-appellant.**

Versus

M/s Rajesh Kumar Gupta through M/s Abbal Hasan &
Company, Babail Buzurg, Saharanpur.
… **Defendant-Respondent.**

Sri Bhupender Singh, learned Standing Counsel for the appellant.
Sri Rajendra Dobhal,Adv.,Learned counsel for the respondent.

Coram : Hon'ble P.C.Verma, J.
Hon'ble B.S.Verma, J.

Dated August 10, 2004

This appeal has been preferred against the judgment and decree dated 9-8-1995 passed by the Civil Judge (Sr.Division) Dehradun in Original Suit No. 76 of 1994, State of U.P. Vs. M/s Rajesh Kumar Gupta, whereby the learned Judge rejected the objection under Section 30/33 of the Indian Arbitration Act of the appellant filed against the award dated 6-1-1994 and made the same Rule of the Court.

Brief facts giving rise to the present appeal were that an agreement of contract between the parties was executed in terms of contract no. 3/S.E./82-83 dated 3-2-1983 for construction of drainage crossing at Km. 11-6 of power channel under Khara Hydel Scheme on Khara Nala and the work under the contract was to start from 3-2-1983 to be completed within a period of 18 months, i.e. upto 2-8-1984 by the respondent, but the work was not completed within the stipulated period, hence on the request of the respondent the time was extended and finally the work was completed on 21-7-1982. The cost of the contract was Rs. 28,08,482/-; that during the

execution of work certain disputes and differences arose between the parties and the dispute was referred to the sole arbitrator, who submitted the award on 6-1-1994 to be made rule of the court, which was registered as Civil Suit No. 76 of 1994 in the court below. Thereafter notice was issued to the State, which filed its objections alleging therein that the award of the arbitrator was erroneous and not tenable; that the arbitrator has misconducted the proceedings as conditions of contract were not considered by him. Ultimately, it was prayed that on account of misconduct apparent on the face of record the award was liable to be set aside. The objection was supported by the affidavit of the Executive Engineer Netra Prakash.

The defendant-respondent filed its written statement by refuting the allegations made in the objections, inter alia on the ground that the award was legal and no misconduct was committed in the arbitration proceedings. In support of the written statement, defendant M/s Rajesh Kumar Gupta filed its affidavit 10-C before the court below.

After hearing both the parties and perused the record, the learned court below came to the conclusion that the arbitrator had not misconducted himself or the proceedings, therefore, no case for interference was made out. The court below accordingly rejected the objections of the appellant filed under Sections 30/33 of the Arbitration Act. Aggrieved, the State has come up in appeal.

Before scrutinizing the record whether the sole arbitrator misconducted himself or the proceedings, it is necessary to look into the salient feature of the award made by the Arbitrator. The total dispute referred to the Arbitrator involved amounts of Rs. 43,27,841-85 relating to seven items in all. The Arbitrator under the impugned award ignored the claims of Rs. 78,000/-, Rs. 11,15,948/-, Rs. 85,989/- and Rs. 6,775/- in to-to. The subject-matter of the dispute between the parties under appeal related to (A) towards payment due as claim on account of clearance of silt, debris,

boulders and doing clearing co-operation of the work area, in which sum of Rs. 5,46,000/- was claimed and awarded, (b) towards payment due as claim on account of Sales Tax deducted from final bill amounting to Rs. 13,882/- and awarded and (C) payment due as claim on account of pendente lite and other reliefs and cost of arbitration in which amount of Rs. 13,64,299.84 was claimed against award of Rs. 5,71,000/-. Thus, the Arbitrator awarded total sum of Rs. 11,30,882/-. In addition, he also awarded further interest @ 18k% per annum on this amount w.e.f. 2-4-1990 and further interest @ 6% per annum from the date of award to the date of decree or payment, whichever was earlier. The arbitrator also awarded Rs. 2000/- towards half of the stamp duty paid by the contractor.

So far as misconduct on the part of the arbitrator is concerned, the learned counsel for the appellant could not point out anything material which may be sufficient to hold that the arbitrator had misconducted himself or the proceeding, apparent on the face of record. The learned court below has elaborately discussed the case in entirety and we also find that there is nothing to show that the arbitrator had in any way misconducted, himself of the proceeding. Therefore, on the ground misconduct, the appeal does not require any interference by this Court so as to set aside the award.

The learned counsel for the appellant challenged the impugned award only on technical grounds and it was submitted that the amount of sale tax awarded in favour of the respondent by the arbitrator was not justified. Our attention has been drawn to condition no. 1.03.02 of the contract as regards to payment of sale tax, which provides that "the contract price includes all taxes including sales tax, local tax etc. No claim shall be entertained on account of any type of tax paid by the Contractor." Therefore, it was argued that the award of Rs. 13,882/- was liable to be deducted from the award. We find force in the contention of the learned counsel that the contractor could not claim the reimbursement of the amount of sales tax in view of the specific term of the contract

mentioned above. It appears that the court below as well as the arbitrator have misconstrued the aforesaid clause of contract and erred in awarding the sale tax of Rs. 13,882/-, therefore, the award in respect of the reimbursement of the sale tax is contrary to the terms of the contract and the same could not have been awarded.

It was further argued on behalf of the appellant that the Arbitrator has not given any reasons for awarding sum of Rs. 5,71,000/- to the contractor towards increase in prices during the extended period of time. We have considered the submissions in the light of the award made by the Arbitrator. The arbitrator dealt the point in para no. 2.2.9-A of the award. The arbitrator held that "on the basis of evidence on record and submission of parties it is clear that respondents were responsible for the extra cost involved. It is held that the 'No Claim Certificate' was given under duress. The extended period of completion was 4 years. Escalation upto mid dated @ 10% works out to 20%. Accordingly it is held that Respondents are liable to pay a sump sum of Rs. 5,71,000/- to the claimants for increase in prices during the extended period of time." This amount of Rs. 5,71,000/- awarded by the arbitrator is not based on any concrete finding, rather based on discretion. In our opinion, it would be just and proper to reduce the award of Rs. 5,71,000/- to Rs. 4,71,000/- on that score.

Lastly, it was argued that the award of interest @ 18% per annum w.e.f. 2.4.1990 to the date of award, i.e. 6-1-1994, is highly excessive. This contention bears some force. In our opinion, it will be just and proper to award interest @ 15% per annum instead of 18% per annum for the period 2-4-1990 to 6-1-1994.

In view of the discussion aforesaid, we are of the opinion that the award of the Arbitrator does not suffer from any misconduct. Accordingly, we affirm the impugned judgment and order making award in question rule of the court to the extent the amount of Rs. 13,882/- towards amount of sales tax, and Rs.

1,00,000/- towards increase of price during the extended period of time, i.e. Rs. 1,13,882/- in all shall be deducted and amount of interest @ **15%** shall be payable instead of **18%** per annum. Claim of rest amounts shall be paid.

Accordingly, the appeal is partly allowed. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP